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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Addendum

Additional follow-up information provided by Australia to the concluding observations of the Committee against Torture (CAT/C/AUS/CO/3)*,**

[12 November 2010]

* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited.

** Annexes to the present document are available for consultation with the secretariat of the Committee.

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Additional follow-up information provided by Australia to the concluding observations of the Committee against Torture (CAT/C/AUS/CO/3)

1. The Australian Government presents its compliments to the United Nations Committee against Torture, and thanks the Committee for its letter of 6 May 2010, requesting further follow-up information regarding Australia's follow-up to the Committee's May 2008 concluding observations.

2. On 2 August 2010 the Australian Government indicated that because it was in a caretaker period pending the outcome of the federal election on 21 August, the Government regretted that it was not possible to provide the Committee with a response until after the election and the formation of a new Government. The new Government has now been formed.

3. Please find below information regarding the Government's enactment of the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010, recent reforms to Australia's national security legislation, and the outcomes of the National Human Rights Consultation. The Government has carefully considered the Committee's request for information on a number of other issues mentioned in the Committee's letter of 6 May. Given Australia's federal system, this information and these statistics are sourced in a number of Government agencies in nine different Commonwealth, State and Territory jurisdictions. We regret that we are unable to provide this information at this time, however, in accordance with the Government's periodic reporting obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government will provide further information on the issues mentioned in the letter in Australia's next periodic report, due for submission by 30 June 2012.

The Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2009

4. The Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009 was introduced into the Australian Parliament on 19 November 2009 and passed on 11 March 2010. It commenced operation on 14 April 2010. A copy of the Act is attachment A, and is available electronically at: <http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/29CD883CF7120C2CCA25770A000F775B?OpenDocument>. A copy of the Explanatory Memorandum to the Act is attachment B, and is available at: <http://www.comlaw.gov.au/comlaw/legislation/bills1.nsf/bills/bynumber/D7A68A71B96ADE3DCA25767300139421?OpenDocument&VIEWCAT=attachment&COUNT=999&START=1>.

5. The Act implements a specific Commonwealth offence of torture into the Commonwealth *Criminal Code Act 1995*. The Act repealed the *Crimes (Torture) Act 1988* (Cth), as it was made redundant by the new offence of torture. The offence is based on the elements set out in the definition of torture in article 1 of the Convention. Given the serious nature of torture, the offence applies to anyone under Australia's jurisdiction, regardless of whether the actual offence was connected to this country.

6. The offence has Category D extended geographical jurisdiction, as provided for in section 15.4 of the Criminal Code. The consent of the Commonwealth Attorney-General is required before a prosecution for an alleged act of torture committed by a non-Australian citizen outside Australia may be commenced, in the same way as prosecutions for genocide, crimes against humanity and war crimes.

7. The maximum penalty prescribed for the offence is imprisonment for 20 years. This penalty reflects the gravity of the offence of torture.

8. It was agreed with States and Territories that this proposed offence is not to override any of their criminal legislation. Consequently, the Act includes provisions which preserve the operation of State and Territory legislation in relevant circumstances and which make clear that the enactment of the new offence is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

9. The new offence is intended to fulfil more clearly and explicitly Australia's obligations under the Convention against Torture. The Explanatory Memorandum to the Act explicitly referred to the Committee's concluding observations in May 2008, stating, inter alia, at page 1 of the Explanatory Memorandum:

- In recent years, the UN Committee Against Torture has called on nations to enact a specific torture offence. In its Concluding Observations on Australia, issued in May 2008, the UN Committee Against Torture recommended that Australia enact a specific offence of torture at the federal level.

- Mindful of the Committee's recommendation, the Government is enacting a new offence of torture in the Criminal Code, which will criminalise acts of torture committed both within and outside Australia.

10. The Act also amends the Commonwealth *Death Penalty Abolition Act 1973* to extend the application of the current prohibition on the death penalty to State laws, to ensure the death penalty cannot be introduced anywhere in Australia.

11. For further information regarding the specific provisions of the Act, please see the attached Act and Explanatory Memorandum.

Recent reforms to Australia's National Security Legislation

12. The Australian Government is committed to ensuring that its national security legislation contains appropriate safeguards and that Government authorities are accountable in exercising their powers under such legislation. In 2009, the Australian Government engaged in extensive public consultation to review Australia's counter-terrorism legislation. Following this review, in September 2010, the Australian Government introduced the National Security Legislation Amendment Bill 2010 and the Parliamentary Joint Committee on Law Enforcement Bill 2010 into the Australian Parliament. These Bills are currently being considered.

13. The National Security Legislation Amendment Bill includes amendments that will:

- Clarify and improve the operation of the treason and sedition offences in the Criminal Code;

- Enhance and clarify law enforcement powers to investigate terrorism under the *Crimes Act 1914;*

- Improve the terrorist organization listing regimes in both the Criminal Code and the Charter of the United Nations Act 1945 (Charter Act);

- Improve the processes for protecting national security information in court proceedings under the *National Security Information (Criminal and Civil Proceedings) Act 2004;*

- Extend the role of the Inspector-General of Intelligence and Security to inquire into an intelligence or security matter relating to any Commonwealth Department or agency.

14. The Parliamentary Joint Committee on Law Enforcement Bill will establish the Parliamentary Joint Committee on Law Enforcement which will replace and extend the functions of the current Parliamentary Joint Committee on the Australian Crime

Commission to also include broad oversight of the Australian Federal Police. This will provide an additional oversight mechanism for this key law enforcement agency.

15. Human rights obligations will also be taken into account as part of a further review of counter-terrorism laws by the Council of Australian Governments, which is expected to commence in December 2010.

16. In March 2010, the Australian Government also legislated to establish a new Independent National Security Legislation Monitor to review the operation and effectiveness of counter terrorism and national security legislation. The Monitor's role will also assist in ensuring that the legislation is consistent with Australia's international obligations, including human rights, counter-terrorism and international security obligations, and contains appropriate safeguards for protecting the rights of individuals. A decision on the appointment of the Monitor is expected shortly.

Australia's Human Rights Framework

17. On 21 April 2010, Australia's Attorney-General, Robert McClelland, launched Australia's Human Rights Framework. The framework is the Government's response to the report of the National Human Rights Consultation Committee, which was appointed by the Government in December 2008.

18. The Framework is an outline of action the Government will take to promote and protect human rights in Australia. The Framework acts on the key recommendations of the National Human Rights Consultation Committee and complements a number of actions the Government is already taking to encourage greater inclusion and participation in the Australian community.

19. The Framework is based on five key principles and focuses on:

- Reaffirming a commitment to our human rights obligations;
- The importance of human rights education;
- Enhancing our domestic and international engagement on human rights issues;
- Improving human rights protections, including greater parliamentary scrutiny;
- Achieving greater respect for human rights principles within the community.

20. Specifically, the Framework demonstrates the Government's commitment to positive and practical action in relation to human rights through a number of key commitments, including:

- Investing over $12 million in a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community;
- Establishing a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with our international human rights obligations;
- Requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with our international human rights obligations;
- Combining federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly;

– Creating an annual non-government organization Human Rights Forum to enable comprehensive engagement with non-government organizations on human rights matters.

21. These changes are designed to have broad effect and will enhance the understanding of, and respect for, human rights across the Australian community.

22. The reference point for Australia's Human Rights Framework and for the statements of compatibility is the core human rights treaties to which Australia is a party. The Framework states that Australia 'can and should live up to its obligations under those treaties'.

23. The Human Rights Framework is available at <www.ag.gov.au/humanrightsframework>. The Government will review the operation of the Framework in 2014 to assess its effectiveness in the protection and promotion of human rights in Australia.